IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.343 of 2007.

M/s.Hemant Melinkeri &
Associates ..Appellant

versus

Mr.Shivram Bal Keshav Phadke ..Respondent.

Mr.Jaydeep S. Deo for the Appellant
Mr.N.R.Bubna for the Respondent

Coram : S.R.Sathe, J.
Dated : 21st August, 2007

P.C.

1. Heard both the learned advocates at length.

2. Perused the papers.

3. As plaintiff's application for temporary injunction restraining defendants from creating any third party interest in respect of suit property was dismissed, plaintiff has filed the present A.O.

4. It is plaintiff's case that the defendant executed an agreement of development of the suit property and accordingly plaintiff was put in possession of the suit property. The plaintiff started development and invested huge amounts. However, the defendant issued notice dated 1.10.2004

and terminated the development agreement. Apprehending that the defendant would create third party interest, plaintiff filed suit for specific performance of the Agreement of Development and also prayed for permanent injunction. He also filed application Exhibit 5seeking temporary injunction as mentioned above.

5. The said application was opposed by the defendants on several grounds. After considering the arguments advanced by both the learned advocates, and considering the documents produced by both the parties, the learned CJSD Pune came to the conclusion that the plaintiff has failed to make out any prima facie case and the balance of convenience is also not in favour of plaintiffs and hence, he dismissed the plaintiffs application.

6. The above mentioned order is challenged by the plaintiffs in the present appeal. In this appeal the learned advocate for the appellant submitted that the learned trial Judge has failed to consider the point that development agreement was executed by the defendant long back and thereafter plaintiffs had taken several steps with regard to development and incurred huge expenses. So,

according to him if temporary injunction is not granted, the plaintiff would suffer irreparable loss. He, therefore, submitted that the appeal be allowed. As against this, the learned advocate for the defendant supported the order passed by the learned trial Judge.

7. The execution of the agreement dated 23.10.1997 is admitted. It does appear that the plaintiff had taken some steps in pursuance of the development. However, it is very clear that as per Clause 8 of the said agreement, the plaintiffs were expected to take possession from the tenants. However, the same has not been complied by the plaintiffs. So, the major part of the development has not been complied by the plaintiff. It is needless to say that this court in Gajanan Malik vs. Kolte Patil Developers 1992(2) Bombay Cases Reporter has observed that specific performance of development agreement cannot be sought and the possession of the developer is on behalf of the owner and as such no injunction can be granted in developer’s favour against the owner. In the instant case the development agreement was executed in the year 1997. The learned trial Judge has observed that there is no material on record to show

that the plaintiff developer has acted in accordance with the development agreement and performed his part of contract. On the contrary, it appears that the development agreement was cancelled by the defendant by issuing notice dated 1.10.2004. We find that even thereafter plaintiff did not file the suit for specific performance and injunction immediately, so the learned trial Judge has in fact observed that the plaintiff is guilty of delay and latches.

8. It is needless to say that relief of temporary injunction is a discretionary relief. The trial Court, after considering the material on record has reached to a conclusion that plaintiff has not made out any prima facie case and the balance of convenience is also no in favour of the plaintiffs. The view taken by the learned trial Judge cannot be said to be erroneous or arbitrary. So, under such circumstances, I do not find any reason to interfere with the order passed by the learned trial Judge.

9. In this view of the matter, there is no substance in the appeal. Hence, appeal is dismissed.

(S.R.Sathe, J.)